v. *H. & St. J. Rd.*, 75 Id. 425; *Morrison* v. *Erie Ry.*, 56 N. Y. 302; *G., H. & S. A. Rd.* v. *Smith*, 59 Tex. 406; especially where a passenger steps off a moving train contrary to the warning of train employees: *Jewell* v. *Rd.*, 54 Wis. 610. Nor will a passenger be justified in exposing himself to such peril upon the command, direction or advice of a conductor or other official on the train, be it ever so plain and unambiguous. In such a case the passenger should, instead of complying, disobey such command or disregard such advice, for otherwise his rashness in exposing himself to visible danger will defeat recovery in any case: *Southwestern Ry.* v. *Singleton*, 66 Ga. 252; s. c. 67 Id. 306; *St. L., I. R. & S. Rd.* v. *Cantrell*, 37 Ark. 519; *Rd.* v. *Krouse*, 30 Ohio St. 222; *C. B. & Q. Rd.* v. *Hazzard*, 26 Ill. 373; *J. & C. Rd.* v. *Hendricks*, 26 Ind. 228.

WILLIAM COLEBROOKE.

RECENT AMERICAN DECISIONS.

Supreme Court of Pennsylvania.

BENTLEY v. LAMB.

The duty to perform a positive promise which is not contrary to law or to public policy, or obtained by fraud, imposition, undue influence, or mistake, is an obligation in morals, and being so, it is a sufficient consideration for an express promise.

A. gave to B., who had been employed by him for a number of years as sales-lady, a due-bill for $3000, payable within one year after his death. This due-bill was given in pursuance of an agreement wherein he agreed to give her the same, and stated that it was for additional compensation for services rendered. A. died, and his executors, on suit being brought on the due-bill, set up want of consideration. *Held*, that the services rendered, although partly paid for, were sufficient consideration for the due-bill.

ERROR to Common Pleas No. 1, Philadelphia county.

Assumpsit by Julia W. Lamb against William K. Bentley and Elizabeth Green, executors of John B. Green, deceased, upon a due-bill for $3000, given by decedent to plaintiff. The action was upon the following due-bill:

"Philadelphia, April 5th 1883.

"Due Miss Julia W. Lamb, three thousand dollars, additional compensation as sales-lady in my store, No. 728 Spring Garden street, payable one year after my decease, by my executors or administrators to be paid out of my estate. If Miss Julia W. Lamb dies before it becomes due, the money will revert back to the estate.

[Signed] JOHN B. GREEN, 728 Spring Garden Street."

This was given in pursuance of an agreement of like date, which read thus:

"Philadelphia, April 5th 1883.

"Whereas, Miss Julia W. Lamb has been in my employ for about twenty-three years as sales-lady, and having been faithful in the discharge of her duty, and wishing to give her additional compensation for the services rendered, I hereby agree to give her a due-bill of three thousand dollars, payable by my executors within one year from the time of my decease, to be paid out of my estate.

[Signed] JOHN B. GREEN, 728 Spring Garden Street."

John B. Green died June 14th 1883, leaving a will dated June 1st 1883, which revoked all prior wills. The testator's daughter swore that on the Tuesday following her father's decease she paid the plaintiff "her week's wages, six dollars. I knew that six dollars was her week's wages, as I have frequently paid her before. She did not claim anything more being due her. She said that it was all right." The court instructed the jury to find a verdict for the plaintiff. Verdict and judgment accordingly for plaintiff, whereupon defendants took this writ.

John G. Johnson, for plaintiffs in error.

James S. Williams and *M. Hampton Todd*, for defendant in error.

The opinion of the court was delivered by

GREEN, J.—We do not see how we can say as matter of law that there was no evidence of a consideration for the obligation in suit. There was no testimony as to what the actual agreement of the parties was in regard to the compensation to be paid to the plaintiff for her services. There was inferential evidence that it was six dollars per week, because that amount was paid to and accepted by her for one week's service after the testator's death. But this is not necessarily inconsistent with a possible promise that she should be paid a larger sum. It is, of course, consistent with the theory that the sum thus paid was the stipulated compensation, and therefore it would be evidence, though not conclusive, in an action for the services. But here the action is upon an express positive promise, in writing, signed by the decedent, to pay a fixed sum. The only defence is want of consideration. What is the state of the proof upon this subject? A previous writing, also

signed by the decedent, is in evidence, in which he recites that the plaintiff had been in his employment for twenty-three years as sales-lady; that she had been faithful in the discharge of her duty; and that he wished to give her additional compensation for her services; and in consideration of these facts he agrees that he will give her a due-bill for $3000, to be paid by his executors within one year after his death. The decedent lived upwards of two months after this paper was executed, and the plaintiff continued to render him service to the time of his death. The writing not only recognises, but declares, that the due-bill shall be given as *compensation* for services rendered—additional compensation, it is true, but compensation nevertheless. To what it was additional we do not know. Whether it was additional to full or only partial compensation previously paid, is only a matter of conjecture. There is no inference of law that the previous compensation was in full, and the inference of fact would rather be that it was partial only, simply because the decedent himself so treats and declares it. Such a declaration is certainly some evidence that there was an obligation which the decedent regarded as binding upon him; and in consideration of his own sense of duty in the circumstances, no matter how it arose, he contracted with the plaintiff that he would give her a due-bill for the amount stated. In execution of this contract he did give her the due-bill in question upon which this suit is founded. If it be granted that the agreement to give the due-bill imposed no legal obligation, how can it be denied that it created at least a moral obligation to do so? The duty to perform a positive promise which is not contrary to law or to public policy, or obtained by fraud, imposition, undue influence, or mistake, is certainly an obligation in morals, and, if so, it is a sufficient consideration for an express promise. But in the due-bill the recital of the consideration of actual services rendered is repeated, and it is some proof that the services had been rendered, and had not been fully compensated. The decedent himself so admits and asserts, and it would be an unjust assumption in the law to infer the contrary in the face of such testimony. These features in the present case constitute a wide difference between it and the cases cited for the plaintiff in error, in which it was either proved or properly assumed that the past consideration was entirely executed. Here there is, in the first place, a written agreement to give the due-bill, and the actual execution and delivery of the due-bill in performance of that agree-

ment. There is, in addition, the undisputed declaration of the promise, that both the agreement and due-bill were given as compensation for long and faithful services actually rendered by the plaintiff, and no distinct proof that those services had been fully paid for. In such circumstances we cannot say there was no evidence of any obligation, legal or moral, to give the due-bill in question; and, such being the case, there being nothing else to impeach the right of recovery, the court below was right in directing a verdict for the plaintiff. Judgment affirmed.

We have read this case with more than usual interest, on account of the important question involved, and because it has seemed to us that the rule therein laid down respecting the sufficiency of a mere moral obligation to support an express promise can hardly be regarded as the rule of the common law. If there is any one well-settled rule of the common law, it is that a valuable consideration is necessary to support a simple contract; and we have always understood a merely moral obligation not to be a valuable consideration. With reference to this question, Mr. Baron PARKE said: "A mere moral consideration is nothing:" *Jennings* v. *Brown*, 9 M. & W. 501. See the cases collected in 1 Pars. Cont. *432–4. With reference to this subject Mr. Parsons says: "The rule may now be stated as follows: A moral obligation to pay money or to perform a duty is a good consideration for a promise to do so, where there was originally an obligation to pay the money or to do the duty, which was enforceable at law but for the interference of some rule of law:" 1 Pars. Cont. *434; note to *Wennall* v. *Adney*, 3 B. & P. 249.

It is true that the case of *Lee* v. *Muggeridge*, 5 Taunt. 36, lays down the rule that a moral obligation is a good consideration for a subsequent promise to pay, and applies the doctrine to the promise of a woman made after the death of her husband to pay a bond made by her during coverture for the repayment by her executors, of money advanced to her son-in-law, at her request, on the security of said bond. This case is supported by a number of cases and *dicta*: *Atkins* v. *Banwell*, 2 East 506; *Hawkes* v. *Saunders*, 1 Cowp. 294; *Gibbs* v. *Merrill*, 3 Taunt. 311; *Seaman* v. *Price*, 2 Bing. 439; *Bentley* v. *Morse*, 14 Johns. 468; *Glass* v. *Beach*, 5 Vt. 176; *Barlow* v. *Smith*, 4 Id. 144; *Turner* v. *Patridge*, 3 P. & W. 172; *Commissioners* v. *Perry*, 5 Ohio 58; *Fairchild* v. *Bell*, 1 Rice (S. C.) Dig. 60; *Stewart* v. *Eden*, 2 Caines 150; *Wilson* v. *Burr*, 25 Wend. 386. See, also, *Goulding* v. *Davidson*, 26 N. Y. 604.

The case of *Lee* v. *Muggeridge*, is, however, believed to be opposed to the weight of common-law authority. Besides the authorities already cited, see *Littlefield* v. *Shee*, 2 B. & Ad. 813: *Monkman* v. *Shepherdson*, 11 A. & E. 415; *Beaumont* v. *Reeve*, 8 Q. B. 486; *Eastwood* v. *Kenyon*, 11 A. & E. 447; *Kaye* v. *Dutton*, 7 M. & G. 807; *Cook* v. *Bradley*, 7 Conn. 57; *Mills* v. *Wyman*, 3 Pick. 207; *Edwards* v. *Davis*, 16 Johns. 283, note; *Smith* v. *Ware*, 13 Id. 259: *McPherson* v. *Rees*, 2 P. & W. 521; *Freeman* v. *Robinson*, 9 Vroom 383; *Dodge* v. *Adams*, 19 Pick. 429; *Loomis* v. *Newhall*, 15 Id. 159; *Parker* v. *Carter*, 4 Munf. 273; *Hawley* v. *Farrar*, 1 Vt. 420; *Farnham* v. *O'Brien*, 22 Me. 475; *Warren* v. *Whitney*, 24 Id. 561; *Snevely* v. *Read*, 9 Watts 396; *Ehle* v. *Judson*, 24 Wend. 97; *Geer* v. *Archer*,

2 Barb. 420; *Shepard* v. *Rhodes*, 7 R. I. 472; *Bates* v. *Watson*, 1 Sneed 376; *Nash* v. *Russell*, 5 Barb. 556; *Watkins* v. *Halstead*, 2 Sandf. 311; *Allen* v. *Bryson* (S. Ct. Iowa), 25 N. W. Rep. 820; Yelv. 41 b; Metc. Contr. 178; 1 Chit. Contr. (11th Am. ed.) 52; 2 Bl. Com. (Cooley's ed.) 445, note; 1 Pars. Cont. *434.

Possibly upon the facts of the principal case the court was warranted in saying that it could not say as matter of law that there was no evidence of a consideration. But upon the other hand there was, as it seems to us, evidence tending to show that the due-bill was a mere gratuity, and it seems to us that the question was properly one of fact for the jury. The equities of the case were clearly with the plaintiff, and one cannot regret that the decision was in her favor. But the court have, as it seems to us, in laying down the rule that the duty to perform a positive promise which is not contrary to law or to public policy, or obtained by fraud, imposition, undue influence or mistake, is an obligation in morals, and, if so, sufficient consideration for an express promise, gone farther than the English or American authorities will support them; or to state our opinion more clearly, it seems to us that this doctrine can find no valid support in the common law.

M. D. EWELL.

Chicago.

Supreme Court of Oregon.

WHITE *v.* COUNTY JUDGE.

Where a state constitution provides that every white male citizen, who shall have resided in the state for a certain period preceding the election, shall have the right to vote, any registry law which requires previous registry of the citizen as a prerequisite to the right to vote is unconstitutional and void.

Such a law is not a rule of procedure, but a legislative condition attempted to be attached to the exercise of a constitutional right.

THIS suit was brought to determine the constitutionality of the late act providing for the registration of voters. The constitution of Oregon, art. 2, sect. 2, provides: "In all elections not otherwise provided for by this constitution, every white male citizen of the United States of the age of twenty-one years and upwards who shall have resided in the state during the six months immediately preceding such election, and every white male of foreign birth of the age of twenty-one years and upwards who shall have resided in this state during the six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law."

G. A. McBride, *W. D. Fenton* and *John Burnett*, for appellant.

Joseph Simon and *John M. Gearin*, *contra.*